

REMARKS

Oath/Declaration

The examiner objected to the declarations asserting that one of the inventor's signatures had been omitted. However, the applicant submitted two sheets of declarations, one including two inventor signatures and the other including the third inventor signature (copies attached hereto including the stamp evincing receipt by the USPTO). The objection should be withdrawn.

Claim Rejections - 35 USC §102

The examiner rejected claims 11 and 14-21 under 35 USC §102(b) as anticipated by Russo (US 6,025,868). The applicant believes the above amendments overcome the rejections.

Regarding claim 11, Russo does not disclose or suggest a method of using a personal video recorder to select a potential transmission time from a plurality of transmission times corresponding to a selected pay per view program. The rejection should be withdrawn.

Regarding claim 18, Russo does not disclose or suggest a personal video recorder for receiving a pay per view program, the pay per view program having a schedule including a plurality of transmission times and channels associated with the plurality of transmission times, the personal video recorder comprising a controller configured to select one of the plurality of transmission times corresponding to when at least one content delivery path is available, and to receive the pay per view program on the at least one content delivery path by tuning to the channel associated with the selected transmission time. The rejection should be withdrawn.

Claim Rejections - 35 USC §103

The examiner rejected claims 1, 2, 5 and 7-10 under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Haddad (US 6,072,982). The applicant respectfully disagrees.

Regarding claim 1, the examiner has failed to establish a prima facie case for obviousness since modifying Schlarb in view of Haddad would render Schlarb inoperable.

Schlarb teaches to display a program guide to an end user, wherein the program guide includes a list of programs and their associated transmission times. An end user selects a program to be viewed from the program guide, wherein the program is transmitted to the program receiver at the transmission time indicated in the program guide (see paragraph 0016). In contrast, Haddad discloses that the transmission time of a selected program is determined by a program provider or “Distribution Center 100” (see FIG. 1 and col. 7, line 25 to col. 8, line 38).

If Schlarb were modified in view of Haddad, Schlarb would not be able to display the program guide, including the transmission times, because, according to Haddad, the program provider may determine the transmission times and may constantly change them to meet customer demands. In other words, modifying Schlarb in view of Haddad would result in a system wherein the program provider determines and frequently changes the transmission times instead of providing a list of fixed transmission times in a program guide to the program receiver. Thus, Schlarb would be rendered inoperable, since the program guide displayed to the end user could not include the transmission times.

Moreover, the channels in Schlarb are conventionally broadcast channels, such as HBO, which are broadcast to many program receivers without video recording capabilities. If Schlarb were modified in view of Haddad, and the program provider could change the transmission times to accommodate customer demands, then many

customers would not be able to watch their regularly scheduled shows at the expected transmission times. The fixed schedule transmission system disclosed by Schlarb would be rendered inoperable by incorporating Haddad's completely flexible schedule controlled solely by the program provider. The rejection should be withdrawn.

The examiner rejected claims 3 and 4 under 35 USC §103(a) as unpatentable over Schlarb in view of Haddad and further in view of Schulthesis (US 6,545,722). The applicant believes the amended claims overcome these rejections for many of the same reasons discussed above, and respectfully disagrees with the rejections for additional reasons discussed below.

Regarding claim 3, neither Schlarb nor Haddad nor Schulthesis disclose or suggest that if no programs are scheduled to be recorded during the potential transmission time, at the predetermined time period prior to the potential transmission time:

- (1) displaying a change channel request to change to the associated transmission channel for the potential transmission time;
- (2) waiting a predetermined wait for response time for a response to the change channel request from the user;
- (3) if the response to the change channel request received from the user is positive, determining that the availability status of the content delivery path is available;
- (4) if the response to the change channel request received from the user is negative, determining that the availability status of the content delivery path is not available; and
- (5) if the response to the change channel request is not received from the user within the predetermined wait for response time for receiving the change channel request, determining that the availability status of the content delivery path is available.

Schulthesis discloses (col. 11, lines 5-13) to display a reminder message on the TV screen 5 minutes before the starting time of a program scheduled for recording. Nowhere does Schulthesis disclose or suggest to display a change channel request to change to the associated transmission channel for a potential transmission time of a pay per view program. In contrast, Schulthesis discloses that the system “will automatically change channels one minute before the starting time of the events in the reminder list.” The rejection should be withdrawn.

The examiner rejected claim 6 under 35 USC §103(a) as unpatentable over Schlarb in view of Haddad and further in view of Yoshinobu (US 5,699,104). The applicant respectfully disagrees.

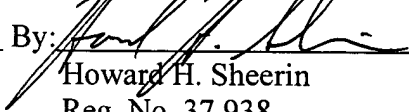
Neither Schlarb nor Haddad nor Yoshinobu disclose or suggest displaying a screen overlay to prevent viewing of the pay per view program during receipt of the pay per view program. The rejection should be withdrawn.

The rejection of the remaining claims should be withdrawn for at least the reasons set forth above.

CONCLUSION

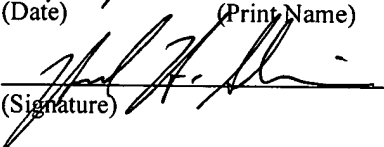
The above amendments to the claims do not raise new issues or add new matter; the applicants respectfully requests the examiner enter the amendments. In view of the foregoing remarks, the rejections under 35 USC §102 and 35 USC §103 should be withdrawn. The examiner is encouraged to contact the undersigned over the telephone in order to resolve any remaining issues that may prevent the immediate allowance of the present application.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on:

5/5/06 Howard H. Sheerin
(Date) (Print Name)

(Signature)